BURBANK *v.* ERNST, TUTRIX OF BURBANK, A MINOR.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

No. 151. Argued January 15, 16, 1914.—Decided January 26, 1914.

Where the jurisdiction of the court rendering the judgment depends upon domicile that question is open to reëxamination in the court of another State asked to give the judgment full faith and credit as required by the Federal Constitution. *Andrews* v. *Andrews*, 188 U. S. 14.

Where the evidence as to domicile of the deceased is conflicting and the state court is warranted in finding that the court of probate of another State did not have jurisdiction to probate a will because the domicile of deceased was not in that State, this court will not retry the facts; and under the facts, as found in this case, the decree of probate is not entitled to full faith and credit in another State.

Where the headnote of a decision of a state court is not given special

force by statute or rule of court, the opinion is to be looked to for original and authentic grounds of the decision.
129 Louisiana, 528, affirmed.

THE facts, which involve the validity of a judgment of the Supreme Court of the State of Louisiana, and the determination whether that court was required to give full faith and credit to a judgment of the probate court of Texas, are stated in the opinion.

Mr. Charles S. Rice and *Mr. Sam Streetman*, with whom *Mr. R. B. Montgomery* was on the brief, for plaintiffs in error.

Mr. Henry P. Dart for defendants in error.

MR. JUSTICE HOLMES delivered the opinion of the court.

This case arises in the matter of the succession of T. Scott Burbank. He died in Texas on May 10, 1910, leaving a will dated March 22, 1910, which was admitted to probate there. The executors sought to have the will registered in Louisiana, but the tutrix of Burbank's minor daughter and sole heir filed in the succession record a direct action to annul the will on the ground that the testator died domiciled in Louisiana and that by the laws of that State the will was void. The Supreme Court of Louisiana gave judgment against the will and ordered the application for registry to be dismissed 'as of non-suit.' *Succession of Burbank*, 129 Louisiana, 528. The error assigned is that full faith and credit were not given to the Texas decree.

Of course the jurisdiction of the Texas court depended upon the domicile of Burbank, which therefore was open to reëxamination. *Andrews* v. *Andrews*, 188 U. S. 14. The objection urged is that the Louisiana court attributed conclusive effect to Burbank's conduct in Louisiana taken

in connection with the laws there, instead of recognizing that no statute of that State could prevent his acquiring a domicile wherever he actually might be, elsewhere, and instead of treating the question as one of intent and fact. Burbank was one of the executors under his father's will and as such, on April 8, 1909, at that time being a resident of New Orleans, declared before a notary that then being about to absent himself temporarily from Louisiana and in order to comply with the law, especially Article 1154 of the Revised Civil Code, he constituted one Billings his attorney. If he left the State permanently, his duty, we are told by the Supreme Court, was to surrender his trust, render an account and pay over any balance due. It is true that in his Texas will he declared that Texas was his permanent home, and that he made similar declarations orally and in writing, but on the other hand it is found that his agent continued to represent him, and it seems that he continued to act, as an executor temporarily absent. He had made a will in Louisiana just before leaving, but ten days before making the Texas will he had consulted a lawyer as to making a will that would be valid by the law of Texas, which law allowed dispositions not valid by the law of Louisiana where most of his property was. The Supreme Court not unnaturally suspected, from the declaration of domicile in the will and the circumstances, that Burbank was making up a fictitious case in the hope of avoiding the restrictions of his real domicile before he killed himself, as it is said that he did, in May; and found that the Texas declarations were more than counterbalanced by his declaration of record and his official acts as executor resident in Louisiana. There can be no question that the evidence was conflicting and that the court was warranted in finding as it did.

It is not for us to retry the facts. The ground of the argument here is a statement in the opinion of the court that the recital in the notarial act was conclusive evidence

that Burbank left the State with the intention of returning; but that does not import a failure to recognize, as the court clearly did recognize, that he might change his mind. Reliance also is placed upon the head note of the decision, which states that the intent to leave only temporarily is conclusively presumed to continue until the notarial procuration is recalled, and that the executors are concluded from asserting a change of domicile. But the head note is given no special force by statute or rule of court, as in some States. It inaccurately represents the reasoning of the judgment. In 129 Louisiana it is said to have been made by the court. However that may be, we look to the opinion for the original and authentic statement of the grounds of decision. It may be that in fact the conduct of the testator in Louisiana was given greater weight, because of the statutes of the State, than others might give it, but no error of law appears that would warrant a reversal of the judgment below. *German Savings & Loan Society* v. *Dormitzer*, 192 U. S. 125, 128.

Judgment affirmed.